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OFFICE OF PETITIONS

In re Application of	:	
Tirkkonen et al.	:	
Application No. 10/632089	:	
Filing or 371(c) Date: 08/01/2003	:	
Attorney Docket Number:	:	
59643-00238	:	ON PETITION

This is a decision on the "Petition to Withdraw Abandonment," filed November 6, 2008. The petition is properly treated under 37 CFR 1.181(a).

This Petition is hereby **granted**.

The above-identified application became abandoned for failure to timely and properly reply to the final Office action, mailed June 20, 2006, wherein no claims were allowed. The Office action set a three (3) month period for reply, and provided for extensions of time under 37 CFR 1.136(a).

Applicant filed a Notice of Appeal in response to the Office action on December 20, 2006, and a Pre-Appeal Brief Request for Review. On January 23, 2007, in a Notice of Panel Decision from Pre-Appeal Brief Review, the Panel determined that all claims remained rejected, and the Application was deemed to proceed to the Board of Patent Appeals and Interferences ("Board"). Applicant filed an Appeal Brief on February 23, 2008. The Examiner filed an Answer on June 25, 2007. Applicant then filed a Reply Brief on August 27, 2007. The case was set before the Board, which affirmed the Examiner in a Decision mailed July 31, 2008.

Applicant filed and this Office received a Request for Continued Examination ("RCE") and Submission on September 25, 2008. A Notice of Abandonment was mailed October 8, 2008.

Applicant's Assertion

Applicant files the present petition and asserts that a timely RCE and Submission were filed, and that the holding of abandonment is, therefore, improper.

Applicable Law, Rules and MPEP

37 CFR § 1.114, Request for continued examination, states

(a) If prosecution in an application is closed, an applicant may request continued examination of the application by filing a submission and the fee set forth in § 1.17(e) prior to the earliest of:

(3) The filing of a notice of appeal to the U.S. Court of Appeals for the Federal Circuit under 35 U.S.C. 141, or the commencement of a civil action under 35 U.S.C. 145 or 146, unless the appeal or civil action is terminated.

(b) Prosecution in an application is closed as used in this section means that the application is under appeal, or that the last Office action is a final action (§ 1.113), a notice of allowance (§ 1.311), or an action that otherwise closes prosecution in the application.

37 CFR § 1.304, Time for appeal or civil action, provides

(a) (1) The time for filing the notice of appeal to the U.S. Court of Appeals for the Federal Circuit (§ 1.302) or for commencing a civil action (§ 1.303) is two months from the date of the decision of the Board of Patent Appeals and Interferences.

The MPEP 1214.06 states: “The proceedings in an application or *ex parte* reexamination proceeding are terminated as of the date of the expiration of the time for filing court action.”

Analysis and conclusion

In this instance, after the Board Decision, mailed July 31, 2008, Applicant was given two months before proceedings in the application terminated. Office records reveal that Applicant timely filed a RCE and Submission on September 25, 2008. Accord 37 CFR § 1.304(b).

In view of the foregoing, the petition is granted. The holding of abandonment is hereby withdrawn.

The petition fee has been refunded to Applicant’s deposit account.

The application will be referred to Technology Center Art Unit 2618 for processing of the RCE and Amendment, and for further examination in the normal course of business.

Telephone inquiries concerning this matter should be directed to the undersigned at (571) 272-3232.

/Derek L. Woods/
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